

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL ANTHONY VICTORY,

Plaintiff,

v.

KATHLEEN ALLISON, et al.,

Defendants.

Case No. 1:22-cv-01118-JLT-SAB (PC)

ORDER GRANTING DEFENDANTS'
MOTION TO STAY, AND VACATING
NOVEMBER 9, 2022 HEARING DATE

(ECF No. 9)

Plaintiff Michael Anthony Victory is proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. On September 1, 2022, this action was removed from the Tuolumne County Superior Court by Defendants Bick and Eaton.

On October 14, 2022, Defendants Steve Boyack and Michelle Jachetta filed a motion to stay the responsive pleading deadline pending screening of the complaint. (ECF No. 9.) In filing their motion, Defendants also noticed the motion for hearing date on November 9, 2022. (Id.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (Section 1915

“authorizes a court to review a complaint that has been filed *in forma pauperis*, without paying fees and costs, on its own initiative and to decide whether the action has an arguable basis in law before permitting it to proceed.”); Ross v. Padres LP, No. 17-CV-1676 JLS (JLB), 2018 WL 280026, at *2 (S.D. Cal. Jan. 3, 2018) (“28 U.S.C. § 1915(e)(2) mandates that the court reviewing an action filed pursuant to the IFP provisions of § 1915 make and rule on its own motion to dismiss before directing the Marshal to effect service.”). Therefore, the Court shall grant the Defendants’ motion to stay this action and this action will remain stayed until the Court screens the complaint in due course.

Accordingly, on the basis of good cause, IT IS HEREBY ORDERED that:

1. Defendant’s motion to stay (ECF No. 9) is GRANTED;
2. The deadline for Defendants Steve Boyack and Michelle Jachetta to file a responsive pleading is STAYED and Defendants need not file a responsive pleading until after the Court has screened the complaint pursuant to 28 U.S.C. § 1915A; and
3. The motion is deemed submitted without oral argument pursuant to Local Rule 230(g) and the hearing set for November 9, 2022, is VACATED.

IT IS SO ORDERED.

Dated: October 18, 2022


UNITED STATES MAGISTRATE JUDGE